

2021 NNBA ANNUAL CONFERENCE

FEDERAL LITIGATION UPDATE

PAUL SPRUHAN

NAVAJO NATION DEPARTMENT OF JUSTICE

FEDERAL CASES

FEDERAL APPELLATE CASES

***Brackeen v. Bernhardt* (5th Cir.)**

(Challenge by non-Indian foster/adoptive parents and states of Texas, Indiana, and Louisiana to Indian Child Welfare Act and regulations as race-based statute in violation of equal protection, Tenth Amendment, Non-Delegation, and Administrative Procedures Act)

(Fifth Circuit En Banc court issued decision in April, 2021 concluding certain provisions of ICWA were constitutional and certain provisions were not; pending possible cert. petitions to be filed by 09/03)

***Confederated Tribes of the Chehalis Reservation v. Mnuchin* (D.C. Cir.)**

(Challenge by Nation and other tribes to decision of Department of the Treasury to give portion of CARES Act funding for “tribal governments” to Alaska Native Corporations)

(U.S. Supreme Court holds ANCs are “tribal governments” for purposes of the CARES Act, as they are “Indian tribes” under ISDEAA, i.e. 638 law)

***Navajo Nation v. Department of Interior* (9th Cir.)**

(Breach of trust suit against Department of Interior for failure to consider the Nation’s claims to the Colorado River in management of river)

(Ninth Circuit holds *Winters* doctrine, Treaty of 1868, and pervasive control of Colorado River create enforceable trust obligation for Interior; U.S. and Intervenors filed petitions for en banc review; NN response pending)

DISTRICT COURT CASES

Hopi Tribe v. Trump (Bears Ears litigation) (D. D.C.)

(Challenge by Navajo Nation and four other tribes to reduction of Bears Ears National Monument by President Trump)

(Stayed pending possible Biden proclamation)

Navajo Nation v. Department of Interior (D. D.C.)

(Claim for additional 638 contract funding for Navajo courts)

(Cases seeking \$15 million annual funding for Judicial Branch consolidated and pending cross-motions for summary judgment)

Navajo Nation v. Perdue (N.D. Ohio)

(Suit against opioid manufacturers, distributors, and pharmacies under federal and state law for damages related to opioid misuse)

(Pending as part of multi-district litigation; several bankruptcies pending)

Navajo Nation v. U.S. EPA (D.N.M.)

(Suit for damages under CERCLA and FTCA for Gold King Mine release)

(District Court denied defendants' motion to dismiss; in discovery phase; settlement with mining companies)

Navajo Nation v. U.S. EPA (D.N.M.)

(Suit challenging Trump Administration "Waters of the United States" rule under Clean Water Act)

(Pending remand to agency for new rule-making with or without vacatur of Trump rule)

Non-Federal Cases

In re YRJ (Texas Supreme Court)

(Case involving Navajo child connected to federal Brackeen case; Petitions for review pending before Texas Supreme Court on constitutionality of ICWA)

Non-Navajo Cases of Note

***U.S. v. Cooley* (U.S. Supreme Court)**

(Federal prosecution of non-Indian for drug and gun offenses based on evidence collected by non-cross commissioned tribal police officer on state highway within Crow Reservation)

(Supreme Court holds evidence is admissible as tribe has inherent authority to stop, detain, and search non-Indians on state highways to collect evidence of state or federal crime)